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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

JEFFREY KNIFONG,

Plaintiff,

vs.

**BUTCH GIRARD AND
JAY HANSEN,**

Defendants.

CV-11-018-BU-RFC

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

On May 4, 2011, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends this Court dismiss Defendant Beaverhead County Sheriff's Department.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no

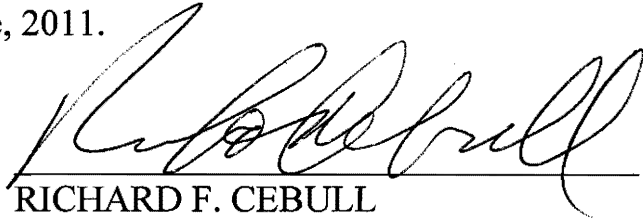
party filed objections to the May 4, 2011 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

Under Rule 17(b) of the Federal Rules of Civil Procedure, the capacity of a sheriff's department to be sued is determined by Montana law. Although this issue has been addressed in California, there does not appear to be a clear decision under Montana law. *Cf. Streit v. County of Los Angeles*, 236 F.3d 552, 565 (9th Cir. 2001)(a California sheriff's department may be sued in federal court). The Court need not decide this issue here, however, because Knifong also named Sheriff Hansen in his official capacity. Naming a county official in his official capacity is effectively the same as bringing claims against the county itself. *Brandon v. Holt*, 469 U.S. 464, 471-72 (1985). Knifong's claims against the Beaverhead County Sheriff's Department are duplicative of the claims against the Sheriff in his official capacity.

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Defendant Beaverhead
County Sheriff's Department is **DISMISSED**. The Clerk of Court shall notify the
parties of the entry of this Order.

DATED the 6th day of June, 2011.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE